

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
WILBUR-ELLIS COMPANY)

Appearances:

For Appellant: Hood and Strong, Certified Public
Accountants
For Respondent: Chas. J. McColgan, Franchise Tax
Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the Wilbur-Ellis Company to his proposed assessment of an additional tax in the amount of ~142.92 based upon its return of income for the fiscal year ended June 30, 1934.

In its return of income for the fiscal year ended June 30, 1934, Appellant deducted the sum of \$27,220.24 as bad debts. The Commissioner disallowed the deduction of debts amounting to \$19,056.77 on the ground that the debts were not properly deductible for that year. Following the consideration of the Appellant's protest to the proposed assessment of additional tax, the Commissioner reduced the amount of debts disallowed to \$8,356.14. The validity of the action of the Commissioner in disallowing the deduction for bad debts in this amount is the sole question presented by this appeal.

Section 8(e) of the Bank and Corporation Franchise Tax Act sets forth two conditions precedent to the deduction of bad debts for a given year: (1) an ascertainment within that year that the debts are worthless and, (2) a charge-off of the debts within that year. To prevail in this appeal the Appellant must show facts which establish its compliance with these conditions.

The bad debts for which a deduction was disallowed by the Commissioner involve twenty-eight accounts of the Appellant. Fourteen of these accounts were included in the deduction for bad debts upon the Appellant's return of income for the fiscal year ended June 30, 1933, which indicated a net loss for that year. Some time after the return of income for the fiscal year ended June 30, 1934, had been filed, the Appellant filed an amended return of income for the fiscal year ended June 30, 1933, omitting these accounts from the deduction for bad debts, the return continuing, however, to indicate a net loss for the year.

We are of the opinion that considering all the facts and circumstances set forth in this appeal and at the oral hearing

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thereon with respect to these fourteen accounts that the Appellant has not established that it reasonably and in good faith ascertained the worthlessness of the accounts and charged off the accounts as bad debts during the fiscal year ended June 30, 1934. The action of the Commissioner in disallowing the following accounts is, accordingly, sustained.

Misubishi Shoji Kaisha	\$700.00
Ora Medlin	73.95
W. E. Roth	171.10
Silveria Dairy	36.00
Frank Silva	28.80
G. Grandala	65.29
M. F. Silva	44.61
F. M. Nunes	88.35
M. M. Souza	77.30
Botelho Bros.	2,655.51
Unpaid Dried-Fruit Drafts	388.75
Walter Holst	586.55
C. H. McCormick	750.00
Malmo & Company	358.12

It has been assumed thus far that the amounts set forth in the foregoing schedule with respect to Mitsubishi Shoji Kaisha and Botelho Bros. constituted debts owed by those firms, respectively, to the Appellant. These amounts represent the value placed by the Appellant upon certain claims which it has sought to collect from these firms, the claims arising from the arrival in a defective condition of goods purchased by the Appellant from them. It does not appear that the validity of the claims was ever recognized by the sellers. Even conceding the validity of the claims, however, it appears very doubtful that they may properly be regarded as debts and included in a deduction for bad debts for the fiscal year ended June 30, 1934. See Wadsworth Manufacturing Company v. Commissioner, 44 F. (2d) 762, holding that a doubtful claim for breach of contract does not constitute a debt.

Sixteen of the accounts included in the deduction for bad debts by the Appellant and disallowed by the Commissioner constitute accounts of dairymen assigned to the Appellant by H. E. Goss of Tracy, California. Eight of these accounts were included in the deduction for bad debts appearing on the Appellant's return of income for the fiscal year ended June 30, 1933. Upon the basis of the facts presented herein no reason appears for distinguishing between the accounts included in this group. The Appellant has not, in our opinion, shown facts which establish eight accounts of this group during the fiscal year ended June 30, 1934. The action of the Commissioner in disallowing the following accounts is, accordingly, sustained.

John Bettencourt	\$129.36
John Dias	130.00
C. Parella	76.82
A. Regallo	75.00
J. A. Souza	58.50
M. F. Silveria	266.65

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Joe A. Souza
C. E. Cook

\$322.00
51.11

In the case of the remaining six accounts involved in this appeal, it appears from the facts set forth in the appeal and the testimony introduced in support thereof that the Appellant had employed all means which are usual and reasonable under the circumstances for the collection of the accounts, that the accounts were worthless and that the Appellant had acted in good faith and not unreasonably in determining or ascertaining the worthlessness of the accounts during the fiscal year ended June 30, 1934. We are, accordingly, of the opinion that the following accounts were properly deductible as bad debts by the Appellant upon its return of income for the fiscal year ended June 30, 1934:

R. P. Phelan	\$405.48
Pacific Cottonseed Co.	17.50
E. T. Blew	56.15
Wilbur-Wester Organization	266.44
H. J. Stoll	466.60
H. V. Carter & Co.	10.20

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of the Wilbur-Ellis Company to his proposed assessment of an additional tax in the amount of \$142.92 based upon the return of income of said company for the fiscal year ended June 30, 1934, be and the same is hereby modified. Said action is reversed insofar as the Commissioner disallowed as a deduction for bad debts the following items:

R. P. Phelan	\$405.48
Pacific Cottonseed Co.	17.50
E. T. Blew	56.15
Wilbur-Wester Organization	266.44
H. J. Stoll	466.60
H. V. Carter & Co.	10.20

In all other respects said action is sustained. The correct amount of the tax to be assessed to the Wilbur-Ellis Company is hereby determined as the amount produced by means of a computation which will include the allowance as a deduction of the above amounts in the calculation thereof. The Commissioner is hereby directed to proceed in conformity with this order and to send to the Wilbur-Ellis Company a notice of assessment revised in accordance therewith.

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Done at Sacramento, California, this 16th day of December,
1936, by the State Board of Equalization.'

R. E. Collins, **Chairman**
Ray L. Riley, Member
' Ray Edgar, Member

ATTEST: Dixwell L. Pierce, Secretary